

Remarks by Justice Carlos R. Moreno
Chairman, Blue Ribbon Commission on Children in Foster Care
Judicial Council of California
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I am pleased to be here today and to tell you about the Blue Ribbon Commission on Children in Foster Care. We kicked off the Commission with our first meeting in San Francisco last month, and I must say, I am impressed and truly inspired by the dedicated group we have assembled to address this important issue.

The Commission is made up of an impressive array of legislators, government leaders, social services professionals, academicians, youth advocates, judges, tribal leaders, and professionals from health, mental health, and the court. In fact, I would like to take a moment right now to recognize some members of the Commission who are in attendance with us today:

Justice Kathryn Doi Todd

Judge Susan D. Huguenor

Judge Dean Stout

Judge Richard C. Blake

Judge Leonard P. Edwards

Justice Richard D. Huffman

Judge Michael Nash

No question, we on the Commission have our work cut out for us. Yet the next two years promise to be an exciting and challenging time, as we join efforts to ensure safe, secure, permanent homes for California's abused and neglected children through improved accountability, collaboration, and effective use of resources.

A few weeks ago at one of our court's weekly petition conferences, we were considering a habeas matter on a defendant in custody who was challenging excessive bail. I pointed out to the Chief that the very first case reported by the California Supreme Court involved a habeas matter also raising the question of bail. So time had not changed much.

That gave me the idea for today to have one of my staff attorneys search for the first dependency-related case, and I have found it, and it also happens to be a habeas matter:

Ex parte The Queen of the Bay (1850), 1Cal.157.

Decided at a time when there existed no protections for abused children in this state.

In that historic case, the captain of a schooner bound for San Francisco Bay stopped for several weeks at one of the Marquesas Islands in French Polynesia. Before leaving the islands, the captain and his mate induced five young girls of about 14 years of age onto the schooner under false pretenses. After the girls came on board, the captain set sail and forcibly held them against their will, treating them with “great cruelty” on the trip to the port of San Francisco. The girls were abused to such a degree that all of them jumped overboard to escape the cruelty, only to be rescued by their abusers who continued to detain them.

The captain continued to hold the girls even when they arrived at the Port of San Francisco, treating them with even greater cruelty. One of the deckhands who had lived in the Marquesas and knew the girls, filed a petition for writ of habeas corpus. The captain and the girls were then brought before the California Supreme Court (which to this day can still have original jurisdiction over habeas matters). The captain did not even pretend to have any legal right to detain the girls. So, the court discharged them and the five girls were eventually sent back to their own country—presumably on another ship or schooner. Sadly, one can only wonder, what happened to them on the way back?

In the more than 150 years following that historic case, the State of California has made much progress in ensuring the health and safety of the children who come before the Courts. That case would be handled very differently today: Social services would get involved; the case would go before the dependency court; the young girls would undoubtedly be accompanied back to their country with someone who cared about their safety; and, today, children are no longer considered property. Juveniles now have a whole panoply of rights — to legal representation, education, health care services, etc.

But still, we know that the children in our care languish in foster care for, on average, three years and, perhaps more discouraging, they are not given the kind of support they need to become responsible and productive members of society.

Through the Commission, we now have a chance to do something about that.

When our Chief Justice established the Commission last month, he saw a critical need to establish a permanent, collaborative, framework to achieve access to services among all who share responsibility for the well-being of California's 97,000 children in foster care—almost 20% (1 in 5) of this nation's total foster care population! The numbers are staggering. In this state, fully 110,000 of the initial 491,000 CPS referrals result in substantiated cases of abuse or neglect. That means that almost 1 out of 4 referrals may lead to foster care for this state's children in distress.

We know that, nationally, children stay for an average of 3 years in foster care, many aging into their teens and early adulthood, as they are bounced to 3 or more homes. Youth who grow up in foster care often leave the system ill-prepared to function successfully in life—fully one-half are unemployed, a third go homeless, and one in five ends up in jail.

This reality is simply unacceptable, and, to apply a legal term to our social contract with these children:

It is unconscionable.

These children, our children, are paying a terribly high price, as is society. We simply have to do better.

The Commission has an unprecedented opportunity to make a real difference in the lives of our state's most vulnerable children. A key issue we are looking at is the reform of federal funding for foster care. You may know that the federal government provides the primary source of funding for the care of foster children, but the state often finds that its hands are tied as it explores options to meet the wide-ranging needs of our children. The recent federal waiver granted to some counties in California gives our child welfare system some increased flexibility with spending the federally mandated funds, but there is still much more to be done.

Most funds currently go to foster care *maintenance* rather than to *prevention* and *permanence*. So there is a perverse incentive for the state to shift these kids into foster care, not away from it, in order to be reimbursed.

Think of the difference we could make if significant resources were dedicated at the *front end* of this problem! Into prevention and early intervention. In fact, credible research shows that expenditures on prevention, early intervention, and permanence pay off in both monetary savings and in healthy kids. Using resources in this way then is a worthy investment - a *smarter* investment - in our state's future and in all of its families.

So, we are also looking at the need to extend adoption assistance and other supports and services to all children.

We are looking at the need to fund guardianship assistance.

We are looking at the need to explore “permanency incentives” and bonuses for reducing caseloads and providing training for caseworkers.

We are also looking at the possibility of creating foster care commissions at the county level – ultimately, in every county throughout the state.

And we are looking at the need to effectively measure safety, permanence and well-being to strengthen accountability. These realigned investments — again, I say, worthy investments — will provide real returns to this state’s innocent and most vulnerable children and to society.

Momentum to reform foster care is building, not just in California, but across the nation. An ever-growing number of states have joined California in introducing Commissions on Children in Foster Care. And just late last summer, the National Judicial Leadership Summit, a group of judges (many state supreme court justices among them), child welfare administrators, and others from every state in the nation convened in an effort to develop state action plans focused on improving outcomes for children in foster care. A national “Call to Action” summarizing the plans that grew out of that summit has just been released by the National Center for State Courts. I was proud to take part in that summit as part of a team representing California.

And so, by forming the Commission, we will take advantage of this momentum and collaboration with other agencies by asserting judicial leadership. It is crucial that judges, like you and like me, take the lead in this effort because of our critical role in the foster care system, and because

“No child enters foster care or leaves foster care without a judge’s decision”.

I tell you, it is as simple as that.

Despite our important role, I don’t have to tell you that the judges in our state do not have the tools nor the resources to better monitor progress and compliance in their dependency cases. Though our state has made progress — significant progress as confirmed by last year’s Court Improvement Project reassessment — many obstacles still remain.

Hearings are often frustrated and obstructed by undue delays. Court caseloads well exceed national standards, jeopardizing thoughtful review. And courts can’t track every child’s progress effectively, because judges have no access to meaningful data on cases. Courts and their partner agencies do not share information necessary to manage cases, measure performance, and ensure system accountability.

Now let me emphasize that this situation is not about assigning blame; rather, it is about sharing responsibility, and finding credible and realistic solutions. An improved future for our state's most vulnerable children depends on it.

So, we'll also be following the recommendations of the national, non-partisan PEW Commission in light of new insight from our own reassessment findings, and implementing the goals summarized in the "Call to Action" report.

Improving legal representation and access for parents and kids.

Looking at ways to prevent neglect and abuse on the front end.

Reducing time in foster care and identifying families who can provide permanence, instead of having foster kids move from one placement to another, and aging into adulthood.

And we'll be creating recommendations to help agencies, caseworkers, and caretakers do a better job, not just with their caseloads, but with their work loads as well.

My own commitment to the issue of foster care is both professional and personal. As a superior court judge I never had the benefit of a dependency assignment, so my perspective may be a bit different from your own. But for close to the past six years, my wife and I have been relative caregivers for our special needs 10-year-old niece. She was removed from her mother's home in New Jersey by the state children's services department.

Weighing just 33 pounds, she was suffering from neglect, dehydration, and malnutrition. When she was placed in a local hospital, she was belatedly diagnosed as autistic and developmentally delayed, completely lacking in life skills such as language, potty training, and even something so basic as chewing food (at 5 years old she was still taking food from a baby bottle). Her mother had not sought services; in fact, owing to her own schizophrenia, she had diligently avoided any contact with social and medical services and relatives who could assist her. We took custody of our niece, because the only other option was that she would be to institutionalize her for perhaps the rest of her life.

My wife and I have struggled over the past five years, dealing with children's services in New Jersey for assistance, but also relying upon local, L.A. County children's service providers — medical, educational, occupational, behavioral — to address the overwhelming problem of caring for an autistic child. Neither my wife nor I had any prior experience, of any significant note, with the healthcare system, much less any experience in dealing with autistic children.

And I tell you, this has been perhaps the most difficult experience I've ever had in my entire life.

As a family we have participated in termination proceedings, bonding evaluations, home studies, and monthly home visits, as well as participating in fair hearing and mediation proceedings, not to mention over a dozen IEP and IPP meetings over the past few years.

And we have had to confront a virtual maze of state and federal regulations and statutes dealing with the rights of the disabled to both proper and appropriate medical and educational care—and no single agency to help coordinate these services. I am pleased to say that, despite these obstacles, our niece has progressed tremendously and she continues to thrive in her stable environment.

So I present this additional personal dimension of my own experience and interest in foster care to you today, particularly as it touches upon the types of assistance and support mechanisms that foster families themselves require from the courts, and other agencies, that share responsibility for the welfare of these vulnerable children. Because, even for someone like me, you would hope familiar with the legal system (at least on a good day), it can be very difficult, if not intimidating, to obtain and coordinate the services and supports one needs.

And so, I commend you all for committing your time, and your skills, and I hope, your creativity, to developing methods and finding solutions for this state's children – those children in foster care as well as all of the other children under the courts' supervision. As well, I thank you for your dedication, and your love, for these most vulnerable of children, society's children, our children.

And, as fellow judicial officers, I thank you for your interest in improving the performance of our state's juvenile and dependency courts - where innocent children are impacted the most, and where often the most critical life decisions are made by judges like you.

Your work is terribly, terribly important and very much appreciated.